IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL STAMP NO.10511 OF 2005.

Manoj Hansraj Bahel & ors. : Appellants.

versus

Darshankumar V. Khanna : Respondent.

Mr.H.S.S.Murthy with Ms.H.M.Ashar for the appellants.

Mr.N.K.Madnane with Suhas Patil for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 21st June 2005.

ORAL ORDER

1. Heard the advocates for the appellants and respondent. There is an application for condonation of delay. Looking to the facts of the case, the delay is condoned subject to

payment of costs of Rs.1,000/-. Payment of costs is a condition precedent. Costs to be paid by the appellant to the respondent within two weeks from today. Application is disposed of.

2. So far as the impugned order is concerned, it is an order under Order 8 Rule 10 of the Civil Procedure Code. Counsel for the appellants contended that on the earlier date when the matter was taken out by the respondent it was argued that the writ of summons was served on 25th August 2004 and on 13th September 2004 the decree came to be passed under Order 8 Rule 10. He also applied for setting aside that decree. But it was held that he has to file an appeal. Therefore, this appeal.

3. In the circumstances, the impugned order is set aside. The matter is remanded back to the said Court who will hear the notice of motion again within three weeks of the date of appearance of the parties. The appellants/defendants will file their written statement within four weeks from the date of appeaances and, thereafter the suit will be proceeded on merits. Appeal is disposed of. Ad

interim order that was passed in favour of the plaintiff to continue till the motion is heard and decided. Suit to be decided and disposed of by the Court within nine months from the date of appearances of the parties. Parties to appear before the Court on 11th July 2005.

[D.G.DESHPANDE]

21/06/2005 JUDGE.